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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,191	09/24/2003	Daniel R. Burnett	022190-000110US	7233

7590

05/05/2005

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EXAMINER

JACKSON, GARY

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/671,191

Applicant(s)

BURNETT, DANIEL R.

Examiner

Gary Jackson

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-118 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☒ Claim(s) 95-118 is/are allowed.
- 6) ☒ Claim(s) 1-19, 22, 30, 32-42, 46-50, 55, 56, 59-63, 65-68, 70, 73-81 and 86-90 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/13/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims withdrawn from consideration are 20,21,23-29,31,43-45,51-54,57,58,64,69,71,72,82-85 and 91-94.

DETAILED ACTION

This action is responsive to applicants' amendment filed January 27, 2005. The functional limitations added to the claims do not distinguish over the art of record. A new ground of rejection is set forth below.

After reconsideration the proposed amendment via a telephone conversation on April 26, 2005 has been withdrawn since it didn't place all of the claims in condition for allowance.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 7 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Pancenka (US Patent 4,517,979). The patent to Pancenka discloses "[a] device" capable of occluding a gastric opening, wherein the device include a member capable of expanding from a first configuration to a second larger configuration and bridging member having a length extending from the occluding member. The bridging member is capable of at least partially pass intermittingly through a gastric opening.

The intended use has no limitations in this instance.

Claims 1-5, 7 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Berman (US Patent 4,133,315). Figure 7 of Berman discloses a device capable of intermittently occluding a gastric opening having an occluding member 16 and bridging member 46 having a size to intermittently move relative to a gastric opening.

Art Unit: 3731

Claims 1-5, 7, 16-19, 46-50 and 55-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoon (US Patent 5,782,800). The patent to Yoon discloses "a device" having an expandable member 134 and a bridging member 120 extended therefrom having a length capable of passing at least partially through a gastric opening and intermittently occlude said opening.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 8-15, 22, 30, 32-42, 61, 65-68, 73-81 and 86-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pancenka, Berman or Yoon above. The expandable materials recited in the claims above are well known in the art and are obvious variations of each other. It would have been obvious to substitute hydrogel, foam or memory for that of Pancenka, Berman or Yoon. It further would have been obvious to provide each of invention so as to readily recognize any of them in the patient's body.

Response to Arguments

Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

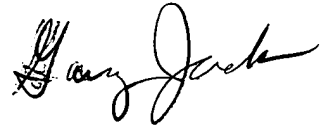
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Jackson whose telephone number is (571) 272-4697. The examiner can normally be reached on Mon.-Thurs. 7:30 am to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Antoine Nguyen can be reached on (571) 272-4693. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3731

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary Jackson
Primary Examiner
Art Unit 3731

A handwritten signature in black ink, appearing to read "Gary Jackson", written in a cursive style.

gj
May 2, 2005